

EXHIBIT 109

RI Dept of Human Services (John Young)

December 3, 2008

Providence, RI

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE LITIGATION)

-----X MDL No. 1456

THIS DOCUMENT RELATES TO:) Master File No.

United States of America ex rel.) 01-CV-12257-PBS

Ven-A-Care of the Florida Keys,)

Inc., et al. v. Dey, Inc., et al.,)

Civil Action No. 05-11084-PBS,) Hon. Patti B.

and United States of America ex) Saris

rel. Ven-A-Care of the Florida)

Keys, Inc., et al. v. Boehringer)

Ingelheim Corp., et al., Civil)

Action No. 07-10248-PBS)

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VIDEOTAPED DEPOSITION OF
THE RHODE ISLAND DEPARTMENT OF HUMAN SERVICES

by JOHN YOUNG

Providence, Rhode Island

Wednesday, December 3, 2008

Henderson Legal Services, Inc.

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<p>1 APPEARANCES</p> <p>2</p> <p>3 On behalf of Boehringer Ingelheim Corp. and Roxane</p> <p>4 Laboratories:</p> <p>5</p> <p>6 SARA K. RANKIN, ESQ.</p> <p>7 Kirkland & Ellis LLP</p> <p>8 200 East Randolph Drive</p> <p>9 Chicago, IL 60601</p> <p>10 312-861-3486</p> <p>11 srankin@kirkland.com</p> <p>12</p> <p>13</p> <p>14 On behalf of the United States of America:</p> <p>15</p> <p>16 BARBARA HEALY SMITH, ESQ.</p> <p>17 Assistant United States Attorney</p> <p>18 United States Courthouse</p> <p>19 1 Courthouse Way, Suite 9200</p> <p>20 Boston, MA 02210</p> <p>21 617-748-3272</p> <p>22 barbara.h.smith@usdoj.gov</p>	<p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 On behalf of Abbott Laboratories, Inc.:</p> <p>4</p> <p>5 CAROL GEISLER, ESQ.</p> <p>6 (Via telephone.)</p> <p>7 Jones Day</p> <p>8 77 West Wacker</p> <p>9 Chicago, IL 60601-1672</p> <p>10 312-269-4117</p> <p>11 cgeisler@jonesday.com</p> <p>12</p> <p>13</p> <p>14 ALSO PRESENT:</p> <p>15</p> <p>16 Patrick Battle, Videographer</p> <p>17 Kerrie Shae, Rhode Island Notary</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
Page 3	Page 5
<p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 On behalf of the Witness:</p> <p>4</p> <p>5 BRENDA D. BAUM, ESQ.</p> <p>6 Assistant Attorney General</p> <p>7 Rhode Island Department of Attorney General</p> <p>8 150 South Main Street</p> <p>9 Providence, RI 02903</p> <p>10 401-274-4400, ext. 2294</p> <p>11</p> <p>12</p> <p>13 On behalf of Dey, Inc.: (Via telephone.)</p> <p>14</p> <p>15 BRENDAN J. CYR, Esq.</p> <p>16 Kelley Drye & Warren LLP</p> <p>17 101 Park Avenue</p> <p>18 New York, NY 10178</p> <p>19 212-808-5021</p> <p>20 bcyr@kelleydrye.com</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>1 INDEX</p> <p>2 WITNESS: JOHN YOUNG PAGE</p> <p>3 Examination By Ms. Rankin..... 010, 251, 268</p> <p>4 Examination By Mr. Cyr..... 198</p> <p>5 Examination By Ms. Geisler..... 204</p> <p>6 Examination By Ms. Smith..... 223, 264</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 NUMBER DESCRIPTION PAGE</p> <p>10 Exhibit Roxane-RI 001 - Amended Notice of</p> <p>11 Deposition.....018</p> <p>12 Exhibit Roxane-RI 002 - Organizational chart</p> <p>13 HHD040-0001.....045</p> <p>14 Exhibit Roxane-RI 003 - Medicaid Drug</p> <p>15 Reimbursement Report</p> <p>16 1990.....048</p> <p>17 Exhibit Roxane-RI 004 - Medicare and Medicaid</p> <p>18 Guide, New Developments,</p> <p>19 pages 10,191 - 10,209...052</p> <p>20 Exhibit Roxane-RI 005 - Transmittal and Notice</p> <p>21 of Approval Of State</p> <p>22 Plan Material.....065</p>

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1	E X H I B I T S (CONTINUED)		1	P R O C E E D I N G S	
2	NUMBER	DESCRIPTION PAGE	2		
3	Exhibit Roxane-RI 006 - Fax cover sheet,		3	VIDEOGRAPHER: We are now recording on	
4	5/18/01 and letter to		4	the record. My name is Patrick Battle. I'm a	
5	Ronald Preston, Ph.D....071		5	legal video specialist on behalf of Henderson	
6	Exhibit Roxane-RI 007 - Pharmacy Services Claim		6	Legal Services. Our business address is 1015,	
7	Form.....084		7	15th Street, Northwest, Suite 525, Washington,	
8	Exhibit Roxane-RI 008 - Copy of legal notices,		8	D.C., 20005. Today is December 3, 2008 and the	
9	6/30/95, Attachments....096		9	time is 9:43. This is the deposition of John	
10	Exhibit Roxane-RI 009 - Letter to Preston,		10	Young in the matter of In Re: Pharmaceutical	
11	5/31/01 from Young.....099		11	Industry AWP versus United States of America, ex	
12	Exhibit Roxane-RI 010 - CCPA Fact Sheet on		12	rel. Ven-A-Care of the Florida Keys, Inc., et al.	
13	Thornton study, Cost of		13	v. Dey, Inc., et al., Civil Action Number 05-	
14	Dispensing Study		14	11084-PBS, and United States of America, ex rel.	
15	summary, January 2007;		15	Ven-A-Care of the Florida Keys, Inc., et al. v.	
16	and Thornton National		16	Boehringer Ingelheim Corp., et al., Civil Action	
17	Study to Determine the		17	Number 07-10248-PBS, in the United States Court	
18	Cost of Dispensing		18	for the District of Massachusetts, Master File	
19	Prescriptions in		19	Number 01-CV-12257-PBS.	
20	Community Retail		20	This deposition is being taken at 1	
21	Pharmacies, Jan. 2007...116		21	West Exchange Place, Providence, Rhode Island.	
22	(CONTINUED)		22	The court reporter is Jane Eaton of Henderson	

Page 7			Page 9		
1	E X H I B I T S (CONTINUED)		1	Legal Services. Counsel will state their	
2	NUMBER	DESCRIPTION PAGE	2	appearances and the court reporter will	
3	Exhibit Roxane-RI 011 - GAO, Fact Sheet for		3	administer the oath.	
4	Congressional		4	MS. RANKIN: My name is Sara Rankin. I	
5	Committees, March 1993..132		5	represent Roxane and the Boehringer entities.	
6	Exhibit Roxane-RI 012 - DHHS, 3/14/02 memo with		6	MS. BAUM: My name is Brenda Baum, and	
7	attached OIG Report.....140		7	I am Assistant Attorney, Rhode Island Department	
8	Exhibit Roxane-RI 013 - Receipt for Ven-A-Care		8	of Attorney General, here on behalf of the	
9	presentation Material		9	deponent, John Young.	
10	at NAMFCU Conference,		10	MS. SMITH: Barbara Healy Smith	
11	3/19/98.....148		11	representing the United States.	
12	Exhibit Roxane-RI 014 - United States'		12	MS. RANKIN: Counsel on the phone?	
13	Complaint, U.S. vs.		13	MS. GEISLER: Carol Geisler	
14	Boehringer Ingelheim		14	representing Abbott Laboratories.	
15	and Roxane.....153		15	MR. CYR: This is Brendan Cyr from	
16	Exhibit Roxane-RI 015 - P-TAG Position Paper,		16	Kelley Drye and Warren representing Dey, Inc.,	
17	9/11/2000.....160		17	Dey LP and Dey LP, Inc.	
18	Exhibit Roxane-RI 016 - 9/18/02 Letter from CMS.162		18		
19	Exhibit Roxane-RI 017 - OIG Report, August 1996.255		19	J O H N Y O U N G,	
20	Exhibit Roxane-RI 018 - OIG Report, August 1997.257		20	Having first been duly sworn by the notary, was	
21			21	examined and testified as follows:	
22			22		

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<p style="text-align: right;">Page 74</p> <p>1 more detailed information that explains the 2 state's reimbursement methodology and the amount 3 of dispensing fees. It says here that the 4 proposed reimbursement methodology defines the 5 estimated acquisition cost of the drug product as 6 wholesale acquisition cost plus a 10 percent 7 markup. The second paragraph says, "The previous 8 method is based on the Estimated Acquisition Cost 9 on the average wholesale price." 10 Does this help to refresh your 11 recollection about what the reimbursement 12 methodology was that was in place prior to Rhode 13 Island seeking a change in the reimbursement 14 methodology to wholesale acquisition cost plus a 15 10 percent markup? 16 A. It does reflect that AWP was used as 17 the basis, yes. 18 Q. Rhode Island response goes on to say, 19 "The AWP represents the manufacturer's suggested 20 price which generally is higher than the actual 21 cost of the drug paid by the pharmacy. Indeed, 22 pharmacies typically purchase drug products at</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I was not involved in the discussion, 2 and so at this point in time we would be simply 3 trying to secure approval for the request made in 4 1995. 5 Q. Who would you -- let's see. This 6 letter is submitted by Christine Ferguson; is 7 that correct? 8 A. That's correct. 9 Q. And it is copied to you and Paula 10 Avarista? 11 A. Yes, I believe so. 12 Q. And Ann Martino? 13 A. Correct. 14 Q. Who is Ann Martino? 15 A. Ann Martino was the chief of the office 16 of policy. 17 Q. She is the individual you identified 18 earlier as someone who may be a custodian for 19 State Plan Amendment information? 20 A. Correct. 21 Q. As Medicaid Director, would you have 22 wanted to understand why the pricing methodology</p>
<p style="text-align: right;">Page 75</p> <p>1 prices much less than AWP. The largest savings 2 from the WAC plus 10 pricing methodology will 3 come from generic products. Our experience is 4 that the AWP for a generic product can be up to 5 10 times the WAC." Did I read that correctly? 6 A. You did. 7 Q. Do you recall any discussions about 8 Rhode Island's determination that the AWP is 9 higher than the actual cost of the drug paid by 10 the pharmacy? 11 A. I don't recall specific discussions, 12 no. 13 Q. Do you recall any discussions about why 14 Rhode Island determined that the largest savings 15 from the WAC plus 10 pricing methodology would 16 come from generic products? 17 A. I don't recall specific discussions, 18 no. 19 Q. Do you have any recollection of what 20 your understanding was at the time regarding this 21 move to a WAC plus 10 pricing methodology, the 22 rationale for it?</p>	<p style="text-align: right;">Page 77</p> <p>1 for generic products was being adjusted? 2 A. If it was an action I had proposed, 3 then yes, I would. 4 Q. What if it was an action you hadn't 5 proposed? Would you care to understand the 6 reasoning for why the WAC plus 10 pricing 7 methodology? 8 A. To the extent it was an outstanding 9 action, I would certainly have wanted to be 10 briefed for informational reasons. 11 Q. But you have no recollection of 12 whatever briefing you may have received on why 13 this change was made? 14 A. I do not. 15 Q. The paragraph below the one that I just 16 read has a second sentence, and it says, "On a 17 claim specific basis the payment that results 18 from the state's formula frequently is less than 19 and never exceeds the amount that would be paid 20 under the federal upper limits." 21 Do you understand what federal upper 22 limits are?</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 254</p> <p>1 MS. BAUM: Objection to form of the 2 question and foundation. 3 THE WITNESS: This report would have 4 been a supposition that it might be as much as. 5 A factual basis for assertion would be something 6 that was more direct and would not be expressed 7 as a range. That there might be a vulnerability 8 in using AWP I think this report and certainly 9 other things I have read over time suggest that 10 AWP specifically is less -- is more prone to 11 variability than, I will say, acquisition costs 12 might have been, for example. 13 BY MS. RANKIN: 14 Q. And based on this report, Rhode Island 15 Medicaid would have been on notice that the 16 magnitude could be as great as AWP minus 42? 17 MS. SMITH: Objection. 18 MS. BAUM: Objection. 19 BY MS. RANKIN: 20 Q. Is that correct? 21 A. With the stress on the word "could be," 22 yes.</p>	<p style="text-align: right;">Page 256</p> <p>1 extent that AWP exceeded pharmacy purchase 2 invoice prices was 20.2 percent for brand name 3 drugs and 41.5 percent for generic drugs. The 4 national estimates are 18.3 percent and 42.5 5 percent respectively. 6 Again, these OIG reports would have 7 been routinely received and reviewed by whatever 8 state Medicaid Director was in place at the time, 9 correct? 10 A. Correct. 11 MS. BAUM: Objection, foundation. 12 BY MS. RANKIN: 13 Q. And so isn't it fair to say based on 14 this OIG report Rhode Island Medicaid had notice 15 of some magnitude of difference between AWP and 16 actual acquisition costs, namely, the OIG's 17 estimate of 42.5 percent for generic drugs? 18 MS. BAUM: Objection, form of the 19 question, foundation. 20 THE WITNESS: Certainly this would 21 suggest that there was a difference between 22 average wholesale price and actual acquisition</p>
<p style="text-align: right;">Page 255</p> <p>1 Q. I would like to ask the court reporter 2 to mark as Roxane Exhibit 17. 3 (Exhibit Roxane-RI 017 marked for 4 identification.) 5 BY MS. RANKIN: 6 Q. Another report from the Department of 7 Health and Human Services, Office of Inspector 8 General, dated August 13, 1996. Subject is: 9 Review of Pharmacy Acquisition Costs For Drugs 10 Reimbursed Under the Medicaid Prescription Drug 11 Program of the Florida Agency For Health Care 12 Administration. The first full paragraph, last 13 two sentences state: Most states reimbursed 14 pharmacies for Medicaid prescriptions using a 15 formula which generally discounts the average 16 wholesale price by 10.5 percent. The objective 17 of our review was focused on developing an 18 estimate of the difference between the actual 19 acquisition costs of drugs of pharmacies and AWP 20 for both brand name and generic drugs. 21 Then in the third paragraph it says, 22 third sentence: The overall estimate of the</p>	<p style="text-align: right;">Page 257</p> <p>1 cost. 2 BY MS. RANKIN: 3 Q. A difference that could have the 4 magnitude of 42.5 percent, correct, for generic 5 drugs? 6 A. Correct. 7 Q. Like to ask the court reporter to mark 8 as Roxane Exhibit 18 another OIG report. 9 (Exhibit Roxane-RI 018 marked for 10 identification.) 11 Q. Dated August 4, 1997. Subject: 12 Medicare Pharmacy Actual Acquisition Costs of 13 Generic Prescription Drug Products. And the 14 first paragraph describes the report as the 15 consolidated results of our review of pharmacy 16 acquisition costs for generic drugs reimbursed 17 under the Medicaid prescription drug program. 18 Few sentences down from there it says -- it 19 describes the objective of their review as, 20 quote, to develop a nationwide estimate of the 21 discount below AWP at which pharmacies purchase 22 generic drugs. Third full paragraph starts with</p>

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<p style="text-align: right;">Page 258</p> <p>1 this sentence: We estimated that pharmacies pay 2 an average of 42.5 percent less than AWP for 3 drugs sold to Medicaid beneficiaries. 4 If you look at the first page of this 5 report, which should have a number on the bottom 6 of number 1, do you see that number in the center 7 of the bottom of the page? 8 A. I do. 9 Q. This page recounts a number of 10 different reports and findings from the OIG 11 regarding magnitudes of percentages that actual 12 acquisition cost was discovered to be below AWP. 13 There's a citation in the third full paragraph to 14 the 1984 OIG report which we've already 15 discussed. There's a citation to a 1989 OIG 16 report where it concludes that pharmacies were 17 purchasing drugs at discounts of 15.5 percent 18 below AWP. Then there's a recounting of a 1989 19 HCFA revision to the state Medicaid manual 20 pointing out by, quote, a preponderance of the 21 evidence demonstrated that AWP overstated prices 22 that pharmacies actually paid for drugs by as</p>	<p style="text-align: right;">Page 260</p> <p>1 difference between AWP and actual acquisition 2 cost could be as high as 85 percent? 3 MS. BAUM: Objection. Form of the 4 question. Foundation. 5 MS. SMITH: Objection. 6 THE WITNESS: It certainly would call 7 into the question the validity of AWP as a sound 8 element to a pricing formula. 9 BY MS. RANKIN: 10 Q. And the reason for that is because of 11 this magnitude of difference between AWP and 12 actual acquisition costs? 13 MS. BAUM: Objection, form of the 14 question. 15 THE WITNESS: I think this suggests a 16 level of variability that regardless of magnitude 17 would call to question whether or not this was 18 the price point you wanted to tie your 19 reimbursement methodology to. 20 (Off-the-record discussion.) 21 BY MS. RANKIN: 22 Q. Okay. If you can turn to previously</p>
<p style="text-align: right;">Page 259</p> <p>1 much as 10 to 20 percent. The manual issuance 2 further provided that absent valid documentation 3 to the contrary it would not be acceptable for a 4 state to make reimbursements using AWP without 5 significant discount. 6 And then it cites at the very bottom of 7 that page an article from 1996, 1996 Barron's 8 article entitled "Hooked on Drugs." And it says, 9 it quotes, focused additional attention on AWP 10 and its relationship to actual acquisition costs. 11 Barron's compared about 300 dose forms of the top 12 20 Medicare drugs and concluded that the true 13 cost was 10 to 20 percent below AWP for brand 14 name drugs and 60 to 85 percent below AWP for 15 generic drugs. Barron's also reported that 16 industry insiders joke that AWP really means 17 "Ain't What's Paid." 18 Consistent with your testimony about 19 the 1996 OIG report, isn't it fair to say that as 20 of August 1997 Rhode Island Medicaid was on 21 notice of all of these various findings recounted 22 in this report that show that the magnitude of</p>	<p style="text-align: right;">Page 261</p> <p>1 marked Exhibit Roxane 12. This is another OIG 2 report from March 14, 2002. We've already 3 discussed this exhibit. The subject, just to 4 remind you, is, again, actual acquisition costs. 5 And, as you'll recall, we talked about this 6 report noting that actual acquisition costs was 7 an average of 65.93 percent below AWP. And 8 additionally on page 7 of the report concluded 9 that WAC was significantly higher than the actual 10 acquisition costs for generic drugs. 11 Consistent with your testimony 12 regarding the other OIG reports we've discussed, 13 isn't it fair to say Rhode Island Medicaid as of 14 March 2002 was on notice that AWP could have a 15 magnitude of difference from actual acquisition 16 cost of 65.93 percent and that WAC was 17 significantly higher than actual acquisition 18 cost? 19 MS. BAUM: Objection to the form of the 20 question. 21 BY MS. RANKIN: 22 Q. As stated in this report?</p>

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